

### **§ 228.13**

(2) A final date for submission of direct testimony on issues of fact not included in the notice of hearing if such issues are presented. The final agenda may also specify a final date for submission of direct testimony to rebut testimony previously submitted during the time specified in the notice of the hearing.

(c) The presiding officer shall publish with the final agenda a list of witnesses who may appear at the hearing, a list of parties, the nature of the interest of each party, and which parties' interests are adverse on the issues presented.

#### **§ 228.13 Determination to cancel the hearing.**

(a) If the presiding officer concludes that no issues of fact are presented by the direct testimony submitted, the presiding officer shall publish such conclusion and notice in the FEDERAL REGISTER that a hearing shall not be held and shall also publish a date for filing written comments on the proposed regulations. Written comments may include proposed findings and conclusions, arguments or briefs.

(b) A person need not be a party to submit any written comments.

(c) Promptly after expiration of the period for receiving written comments, the presiding officer shall make a recommended decision based on the record, which in this case shall consist of the direct testimony and written comments submitted. He shall transfer to the Assistant Administrator his recommended decision, the record and a certificate stating that the record contains all the written direct testimony and comments submitted. The Assistant Administrator shall then make a final decision in accordance with these regulations (§ 228.21).

#### **§ 228.14 Rebuttal testimony and new issues of fact in final agenda.**

(a) Direct testimony to rebut testimony offered during the time period specified in the notice of hearing may be submitted pursuant to these regulations within fifteen days after the conclusion of the prehearing conference unless the presiding officer otherwise specifies in the final agenda.

### **50 CFR Ch. II (10–1–01 Edition)**

(b) If the final agenda presents issues not included in the notice of the hearing published pursuant to § 228.4:

(1) Any person interested in participating at the hearing on such issues presented shall notify the Assistant Administrator by certified mail of an intent to participate not later than 10 days after publication of the final agenda. Such person may present direct testimony or cross-examine witnesses only on such issues presented unless that person previously notified the Assistant Administrator pursuant to § 228.5; and

(2) Additional written direct testimony concerning such issues may be submitted within the time provided in the final agenda. Such direct testimony will comply with the requirements of § 228.7.

#### **§ 228.15 Waiver of right to participate.**

Persons who fail to notify the Assistant Administrator pursuant to §§ 228.5 and 228.14 shall be deemed to have waived their right to participate as parties in any part of the hearing.

#### **§ 228.16 Conduct of the hearing.**

(a) The hearing shall be held at the time and place fixed in the notice of the hearing, unless the presiding officer changes the time or place. If a change occurs, the presiding officer shall publish the change in the FEDERAL REGISTER and shall expeditiously notify all parties by telephone or by mail: Provided, that if that change in time or place of hearing is made less than 5 days before the date previously fixed for the hearing, the presiding officer shall also announce, or cause to be announced, the change at the time and place previously fixed for the hearing.

(b) The presiding officer shall, at the commencement of the hearing, introduce into the record: the notice of hearing as published in the FEDERAL REGISTER; all subsequent documents published in the FEDERAL REGISTER; the draft Environmental Impact Statement if it is required and the comments thereon and agency responses to the comments; and a list of all parties. Direct testimony shall then be received with respect to the matters specified in the final agenda in such order as the presiding officer shall announce. With